Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

WILLIAMS NATURAL GAS COMPANY,
Petitioner,

v.

KANSAS PIPELINE PARTNERSHIP,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Kansas

PETITION FOR WRIT OF CERTIORARI

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Does a state violate the Fourteenth Amendment's guarantee of due process of law when it provides parties the right to a hearing and then revokes that right by allowing the inaction of a state agency, rather than a decision on the merits, to determine the matter?

LIST OF PARTIES AND RULE 29.1 LISTING

In addition to the parties identified in the caption of this Petition, the following were parties to the action below:

Cities of Ottawa and Paola, Kansas
Citizens' Utility Ratepayer Board
City of Overland Park, Kansas
County of Jefferson County, Kansas
County of Wyandotte County, Kansas
Kansas Attorney General Carla Stovall
Kansas Corporation Commission
Miami Pipeline Company
Panhandle Eastern Pipe Line Company
Western Resources, Inc.

Petitioner Williams Natural Gas Company is a wholly owned subsidiary of The Williams Companies, Inc. Other subsidiaries of The Williams Companies, Inc., that are not wholly owned by that corporation are as follows:

Altra Energy Technologies L.L.C.
American Soda, L.L.P.
Apco Argentina Inc.
Free Port Terminal Co. Limited
Kern River Gas Supply Corp.
Kern River Gas Transmission Co.
Kern River Service Corp.
Kiowa Gas Storage, L.L.C.

Nebraska Energy, L.L.C.
NES Supply Corp.
Northern Border Intermediate Limited Partnership
Northern Border Partners, L.P.
Parkco, L.L.C.
Pekin Energy Co.
Reserveco Inc.
TransNetwork Holding Co.
Tubexpress, Inc.
Williams Field Services-Gulf Coast Co., L.P.
Wiljet, L.L.C.

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On Petition for Writ of Certiorari to the Supreme Court of the State of Kansas

PETITION FOR WRIT OF CERTIORARI

Petitioner, Williams Natural Gas Company ("WNG"), seeks a writ of certiorari to review an opinion and order of the Supreme Court of the State of Kansas, which denied review of an order of the Court of Appeals of the State of Kansas holding that the Kansas Corporation Commission's failure to reach a decision on the merits of certain utility applications for changes in the terms of service (the "Applications") within 240 days forever removed the rights of the parties to a decision on the merits.

OPINIONS BELOW

The September 9, 1996, unpublished order of the Supreme Court of the State of Kansas is reprinted at Appendix A.[1] The May 17, 1996, opinion of the Court of Appeals of the State of Kansas is published as Kansas Pipeline Partnership v. State Corp. Comm'n, 916 P.2d 76 (Kan. Ct. App. 1996) and is reprinted at App. B.[2]

JURISDICTION

The Supreme Court of the State of Kansas issued its order on September 9, 1996. App. A. This Petition for a Writ of Certiorari is being docketed in this Court within ninety days from the entry of judgment by that court. This Court's jurisdiction is invoked under 28 U.S.C. § 1257 (1993).

The provisions of 28 U.S.C. § 2403(b) (1993) may apply to this proceeding. The Kansas Corporation Commission and the Attorney General of the State of Kansas were parties below and are being served with three copies of the Petition pursuant to Rules 29.3 and 29.4(c).

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[1] References to documents reprinted in an Appendix will hereinafter appear in the Petition as "App."

[2] The unpublished opinions of the Kansas Corporation Commission that form the basis for the Lower Courts' orders are reproduced at Apps. C through F.

RELEVANT STATUTES

Pursuant to Rule 14.1(f), WNG has attached copies of all relevant constitutional provisions and statutes as Apps. G through J.

STATEMENT OF THE CASE

This case arises from a decision by the Corporation Commission of the State of Kansas ("KCC") in a docket filed by Kansas Pipeline Partnership ("KPP") seeking approval of five contracts (the "Contracts") with Western Resources, Inc. ("WRI"). The KCC held extensive hearings after exhaustive discovery in which KPP, WNG, KCC Staff, the Kansas Citizens' Utility Ratepayer Board ("CURB"), WRI, and various other parties were active participants. All parties submitted briefs. Before the KCC could issue a final decision, the Federal Energy Regulatory Commission ("FERC") ruled that KPP is part of a single interstate pipeline system subject to FERC's exclusive jurisdiction under the Natural Gas Act.[3] Upon learning of FERC's assertion of jurisdiction, the KCC determined the new jurisdictional status was, in effect, an amendment of the application to approve the Contracts and, on that basis, restarted the 240-day statutory decision period, if that period even applied. Kan. Stat. Ann. § 66-117 (b) (the "Statute") provides that various utility filings will be "deemed approved" if the KCC fails to act within 240 days. The Statute

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3 KansOk Partnership, Kansas Pipeline Partnership, & Riverside Pipeline Co., 73 FERC ¶ 61,160 (1995).

is reproduced at App. H.[4] The KCC stayed further action in the consolidated dockets. KPP appealed to the Court of Appeals of the State of Kansas ("Court of Appeals") seeking a determination that the Contracts are deemed approved because the KCC failed to issue a final order within 240 days.

The Court of Appeals determined the 240-day time limit contained in the Statute applies to this matter. WNG first raised its constitutional due process arguments in its Motion for Rehearing En Banc with the Court of Appeals. App. J. The Court of Appeals failed to address WNG's arguments. App. B. WNG likewise raised its constitutional arguments in its Petition for Review before the Supreme Court of the State of Kansas ("Kansas Supreme Court"). App. I. The Kansas Supreme Court denied WNG's Petition without addressing the constitutional arguments on September 9, 1996. App. A. This Court should review that determination because the Statute, as applied by the Lower Courts, violates the Constitution's guarantee of due process of law by removing WNG's right to notice and an opportunity to be heard on the merits. WNG urges the Court to grant its Petition and invalidate the unconstitutional interpretation of the Statute by the Lower Courts.

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[4] Approval of the Contracts does not fall into any of the three clearly defined areas that trigger the Statute's 240-day decision-making time limit. Kan. Stat. Ann. § 66-117 (Supp. 1995). Thus, the Lower Courts' unconstitutional application of the Statute is especially egregious because the Statute should not even have been applied to this proceeding. WNG has not raised issues related to the correct interpretation of the Statute because those issues do not raise important federal questions.

REASONS FOR GRANTING THE WRIT

Summary of Argument

WNG had the statutory right to participate in a hearing on the merits of the Applications. The State of Kansas removed that right without providing WNG due process of law The Kansas decisions violate the Fourteenth Amendment and conflict with decisions of the Court. If the Court allows the Lower Courts' decisions to stand, the citizens of Kansas generally will suffer economic harm. Moreover, the due process issue in this Petition is an important question of federal constitutional law, the resolution of which will have impact nationwide.

I. THE LOWER COURTS' APPLICATION OF THE STATUTE VIOLATES CONSTITUTIONAL DUE PROCESS AND CONFLICTS WITH DECISIONS OF THE COURT.

The Lower Courts' application of the Statute violates the Fourteenth Amendment of the United States Constitution and is inconsistent with the Court's interpretations of procedural due process. The Lower Courts' determination that the 240-day time period for rate cases applies to the approval of these Contracts seriously negated WNG's right to notice. Because the KCC did not require that KPP give the notice and make the filings required for rate cases, no party received the notice prong of procedural due process to which they were entitled. Moreover, by determining the Statute operates to remove the parties' right to a determination on the merits and by effectively cutting off WNG's right to appeal the KCC's interim rulings, the Lower Courts also removed the parties' opportunity to be heard. Because the essence of procedural due

process is notice and an opportunity to be heard, the Lower Courts' interpretation of the Statute rendered it unconstitutional as applied. On review, WNG urges the Court to find that the Lower Courts' interpretation of the Statute violates the United States Constitution.

A. Due Process Requires Notice and an Opportunity to Be Heard.

The United States Constitution provides that the State shall not "deprive any person of life, liberty, or property, without due process of law . . . ."[5] The protection provided by the Due Process Clause requires, at a minimum, "that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."[6] The Lower Courts' application of the Statute deprived WNG of its property rights without "the opportunity to present [its] case and have its merits fairly judged."[7] Thus, the Lower Courts prevented WNG from enjoying the protections mandated by procedural due process.

B. WNG Was Entitled to Due Process.

1. WNG Had a Protectible Interest.

A complete Due Process Clause analysis presents two inquiries for the Court: (1) was WNG deprived of a protected

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[5] U. S. Const. amend. XIV. App. G.

[6] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1949).

[7] Logan v. Zimmerman Brush Co., 455 U.S. 422, 433 (1981).

interest and (2) if so, what process was due?[8] As a competitor of KPP, WNG had a protectible interest in participating in this proceeding.

Kansas law provides WNG with the right, as an interested competitor of KPP, to intervene and participate in KCC proceedings that affect WNG.[9] Because it is grounded in state law, this right is a form of "property" right, to which due process protection must be given.[10] The Logan Court identified two factors that defined Logan's claim as a property right: (1) the "claimant has more than an abstract desire or interest in redressing his grievance" and (2) "its right to redress is guaranteed by the State . . . ."[11] WNG's interests in this proceeding satisfy the first of the Logan factors. WNG's ownership of substantial pipeline assets in Kansas, its employment of 300 Kansas citizens, and its provision of gas transportation services vital to the citizens of Kansas confirm that WNG has more than an abstract interest. Its valuable property rights deserve the protection of the Due Process Clause. Various KCC orders granted WNG party status in the proceedings below.[12] As a party, WNG had the right to fully

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8 Burns v. United States, 501 U.S. 129, 146-48 (1991); Washington v. Walter Harper, 494 U.S. 210, 228 (1990); Logan, 455 U.S. at 428.

9 Kan. Ann. Reg. §§ 82-1-225, 82-1-228 (1994).

10 Logan, 455 U.S. at 430; Mullane, 339 U.S. at 313.

11 Logan, 455 U.S. at 431.

12 See Order Setting Hearing & Procedural Schedule, Kan. Corp. Comm'n Docket Nos. 192,391-U; 192,506-U; 192,507-U (May 1995) (granting WNG's Motion to Intervene); Order Denying Motion for Reconsideration of May 10, 1995 Order Setting Hearing & Procedural

participate in the KCC's hearing on the merits of the Applications. WNG's party status was sanctioned by state law, clearly satisfying Logan's second factor.

Based on the Logan analysis, WNG's right to participate in the KCC proceeding is a constitutionally protected property right. WNG is therefor entitled to the due process protection provided for by the United States Constitution.

2. WNG Did Not Receive Due Process.

Because WNG had an established property right in the proceedings, the Court must next determine what process was required to protect that right. Generally, the Due Process Clause, as applied to the states by the Fourteenth Amendment, protects litigants who seek to protect property or redress grievances in an adjudicative setting.[13] Several opinions of the Court provide due process analyses of cases analogous to the one presented here and demonstrate that the Lower Courts interpreted the Statute inconsistent with due process.

In Societe Internationale v. Rogers, 357 U.S. 197 (1958), the Court determined that a party's case should not be

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Schedule By KPP, Kan. Corp. Comm'n Docket Nos. 192,391-U; 192,506-U; 192,507-U (May 1995) (denying KPP's Motion to Require WNG to Identify Its Interest and to Limit Discovery); Order, Kan. Corp. Comm'n Docket Nos. 192,391-U; 192,506-U; 192,507-U (June 1995) (denying KPP's Petition for Reconsideration of May 31, 1995, Order Denying KPP's Motion to Require WNG to Identify Its Interest and to Limit Discovery); Prehearing Conference Order, Kan. Corp. Comm'n Docket Nos. 192,391-U; 192,506-U; 192,507-U (August 1995) (listing WNG as a party).

[13] Logan, 455 U.S. at 429.

dismissed based upon non-compliance with procedural rules. In particular, the Court noted the Due Process Clause limits the power of courts "to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause."[14] In Rogers, the Court found a due process violation when the plaintiff's case was dismissed because of the plaintiff's good-faith failure to comply with a court order. In this case, WNG did not take any action that led to its loss of protection. Instead, the inaction that led to the deprivation of WNG's rights was that of the decision-maker itself. Nonetheless, the Lower Courts' interpretation of the Statute resulted in a complete loss of WNG's right to a decision on the merits and its right to redress procedural and other errors through the established appellate process based entirely on the KCC's inaction. The loss of WNG's due process protection thus resulted from no fault of WNG whatsoever. The Court held that the plaintiff in Rogers was entitled to a hearing on the merits even though the plaintiff was at least partially at fault. Because WNG is faultless here, Rogers teaches that WNG is entitled to a hearing on the merits.

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1981) presents an even more compelling interpretation of the Due Process Clause. There, the Court determined the dismissal of an employment claim violates the Due Process Clause when the claims was dismissed solely because an agency neglected to act within a statutory time requirement.[15] The statute in Logan was similar to the Statute in this case. It required an agency to hold a hearing within 120 days of the filing of a

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[14] Rogers, 357 U.S. at 209.

[15] Logan, 455 U.S. at 434-35.

complaint.[16] When the agency inadvertently set the hearing date for five days after the statutory period, the claim was challenged by the employer and eventually dismissed.[17] In reversing that determination, the Court held that once a state confers a property right, like the right to a hearing, any statutory limitation on the right will be subjected to constitutional scrutiny.[18]

WNG's situation is nearly identical. The Lower Courts' application of the Statute operated to remove WNG's right to a determination on the merits in the same manner that Logan's rights were barred. Like the agency in Logan, the KCC, through a misunderstanding of the impact of FERC's assumption of jurisdiction, failed to follow the State's procedural guidelines. As in Logan, WNG was not at fault. In fact, WNG was powerless to stop the Statute's application and therefore, powerless to raise its claim that notice was improper or that the Contracts did not merit approval. To deny WNG's right to a decision on the merits and its corollary right to appellate correction of errors by the decision-maker under such circumstances clearly violates the Due Process Clause.

"While the Legislature may elect not to confer a property interest . . ., it may not constitutionally authorize the deprivation of such an interest, once conferred, without

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[16] Id. at 424.

[17] Id. at 426-27.

[18] Id. at 434.

appropriate procedural safeguards."[19] A property owner's rights "are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action."[20] WNG's rights were diminished by the Lower Courts' application of the Statute. Because that application violated WNG's due process rights, the Court should grant this Petition and declare the Statute as applied unconstitutional.

The Lower Courts' decision effectively removed WNG's right to notice inherent in its due process rights.[21] WNG filed a motion with the KCC seeking dismissal of the Applications for failure to give the notice required by a rate case and make the filings required in a rate case. At KPP's insistence, the KCC denied WNG's motion and declined to force KPP to give the required notice and make the required filings. That decision necessarily included a determination that this proceeding was not a rate case. The requirements for filings and proper notice apply in a rate case because the KCC must make a prompt decision. In other cases there is no artificial time limit and therefor no similar need for heightened procedural notice. The Lower Courts' determination that the Contracts are deemed approved by operation of law turned this case on its head by applying the strict, punitive time limits of

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[19] Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985) (quoting Arnett v. Kennedy, 416 U.S. 134, 167 (1974)).

[20] Vitek v. Jones, 445 U.S. 480, 491 (1980).

[21] See United States v. James Daniel Good Real Property, 510 U.S. 43, 53 (1993); Quill Corp. v. North Dakota, 504 U.S. 298, 312 (1992) (identifying "notice as the analytic touchstone of due process nexus analysis"); Lawrence Preservation Alliance, Inc. v. Allen Realty, Inc., 16 Kan. App. 2d 93, 819 P.2d 138 (1992).

the Statute in a case where none of the notice and procedural safeguards applied to rate cases have been enforced. The combination of the KCC's failure to require the notice and filings associated with a rate case and the Lower Courts' application of the 240-day time limit had the effect of denying the parties the notice to which they are entitled by the most fundamental concepts of due process.

The KCC's ruling on WNG's motion seeking dismissal of the Applications leads to another important consideration in this case. WNG's exception to the KCC's ruling on WNG's motion remained preserved for consideration on appeal of the KCC's final ruling in this proceeding. The Lower Courts' rulings that the Contracts are deemed approved, merely by the KCC's failure to act, fully, finally, and irrevocably removed WNG's right to appeal the KCC's ruling because it eliminated a final order and WNG's right to appeal from such an order. If WNG had been permitted a right to appeal the KCC's denial of its motion, WNG would have had an opportunity to reverse an approval of the Contracts, even if that decision were based on the Contracts' merits. The Lower Courts' elimination of WNG's right to an appeal on this critical issue amounted to a denial of both WNG's right to notice and its right to a hearing.

II. THE FEDERAL CONSTITUTIONAL QUESTION PRESENTED BY THIS CASE IS IMPORTANT AND MAY HAVE SIGNIFICANT IMPACT.

A. The Lower Courts' Decisions Have Significant Economic Impact on Kansas Citizens.

The Court should grant WNG's Petition because the issue presented is important. The Lower Courts' decisions in this case will have an impact that affects a significant portion of the Kansas population. If the Lower Courts' application of the Statute is allowed to stand and the Contracts remain "deemed approved," Kansas ratepayers could eventually pay for the Contracts' costs through significantly increased gas rates.

As WNG, CURB, KCC Staff, and others set forth at length at the hearing in this matter, the Contracts are unwise and significantly over-priced. Based on the compelling showing on the merits, the KCC would not have approved the Contracts. Had the KCC approved the Contracts on the merits, its decision would have been reversed on appeal either on the merits or on the KCC's failure to require rate case notice. Thus, in its appeal, KPP accomplished by the KCC's omission an end it could not have accomplished by the KCC's volition. The Court should not permit such a result in a matter of such great public importance. Clearly, based upon the magnitude of the costs to be paid by Kansas ratepayers, this appeal presents an issue of great importance to Kansas consumers.

B. This Court's Application of the Fourteenth Amendment Will Have Implications Nationwide.

The due process issue presented in this Petition is not merely an issue of great importance in Kansas. It has broad national importance and will have a significant impact on utilities and consumers. Kansas gas plays a critical and significant role in the interstate natural gas grid. The application of constitutional due process to the KCC's decisions will have a profound effect on the movement of natural gas out of and through Kansas and, as a result, on gas consumers throughout the country. Furthermore, several states have adopted statutory schemes that could be interpreted in the same manner that the Lower Courts interpret the Statute. This case presents an opportunity to clarify the application of constitutional due process to these statutes. Finally, the regulation of utilities is increasingly being transferred to the states. The role of state utility regulators is therefor becoming increasingly important. The states need the guidance of an opinion from the Court concerning the process that is due in regulatory proceedings as the states embark on their heightened regulatory roles.

The Kansas-Hugoton field located in southwestern Kansas is one of the most prolific and important domestic natural gas fields.[22] One company alone produces over 100 billion cubic feet of natural gas annually from the field. No less than eleven interstate and twelve intrastate natural gas pipelines traverse Kansas. Gas production from Kansas is an integral and critical part of the interstate natural gas grid. The national importance of the Kansas-Hugoton field emphasizes the critical nature of the due process issue raised here.

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[22] Williams Natural Gas Co., 71 FERC ¶ 61,115, at 61,368 (1995).

The KCC is charged with the responsibility for regulating natural gas transportation in Kansas. The importance of Kansas as a gas producing state means that the decisions of the KCC and the procedures that apply to that decision-making process are nationally important. The Court should grant this Petition because resolution of the due process issue presented here will resolve an important constitutional issue with significant national impact.

A review of the statutes effective in other jurisdictions reveals an interesting dichotomy. Several states have adopted a statutory scheme similar to that in effect after the interpretation imposed by the Lower Courts. Kansas, according to the judicial interpretation that is the subject of this Petition, affirmatively requires that a change in rates or other regulated aspects of utility businesses will be "deemed approved" after the passage of a fixed time period thereby removing the parties' right to a decision on the merits of the proceeding.[23] Other states have adopted similar statutes.[24] Statutes of several additional states could be interpreted to include such a provision, although none of those statutes compel the application imposed by the Kansas courts in this

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[23] Kan. Stat. Ann. § 66-117(a) (Supp. 1995); Kansas Pipeline Partnership v. State Corp. Comm'n, 916 P.2d 76 (Kan. Ct. App. 1996).

[24] Minn. Stat. § 216B.16 (2) (a) (1995); Mo. Ann. Stat. § 392.230(5) (Vernon 1996) (telephone); Neb. Rev. Stat. § 19-4616(7) (1996) (municipal utilities); S.C. Code Ann. § 58-5-240 (E) (Law. Co-op. 1995); Tex. Corps. & Ass'ns Code Ann. §§ 2.212(d), 3.211 (d), 5.08(d) (West 1995); Utah Code Ann. § 54-7-12 (3)(c) (1996); Vt. Stat. Ann. tit. 30, § 227(a) (1996); Wis. Stat. § 196.19(d) (1994).

case.[25] Thus, on the one hand, several state utility regulators could be affected by the Court's decision.

On the other hand, the majority of states have enacted legislation that grants the utility protection against unreasonably protracted rate hearings without offending due process. States accomplish this end with a variety of statutes. Some states emulate the federal statutes applicable to FERC by providing that the regulator may suspend a requested change for a fixed period after which the change will be effective subject to refund during the pendency of the case. These statutes do not provide for automatic approval and do not specifically provide, but clearly imply, that proceedings will continue during suspension.[26] Most states permit the regulator to suspend a rate change for a fixed period. At the end of the suspension period, the new rates are effective subject to refund and explicitly subject to final decision.[27] Many of these statutes even require the posting of a bond or other security for the payment of refunds.[28]

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[25] Ala. Code § 37-1-81(B) (1996); Fla. Stat. ch. 366.06(3); 367.081(8) (1996); Idaho Code § 61-622 (1996); Me. Rev. Stat. Ann. tit. 35-A, § 310 (2) (West 1995).

[26] Cal. Pub. Util. Code § 455 (Deering 1996); Colo. Rev. Stat. § 40-6-111(1)(b) (1996).

[27] Montana-Dakota Util. Co. v. Public Serv. Comm'n, 102 N.W.2d 329 (N.D. 1960); see W. Va. Code § 22-2-4a (1996) (specifically providing for a decision on the merits after suspension, but making interim rates not subject to refund).

[28] Ariz. Rev. Stat. Ann. § 40-256 (1996); Ark. Code Ann. § 23-4-411 (Michie 1995); Conn. Gen. Stat. Ann. § 16-19(b) (1994); Ind. Code Ann. §§ 8-2.1-22-20(b)(c); 8-2.1-22-25(b)(c) (Burns 1996); Ky. Rev. Stat. Ann. § 278.190(2) (Michie/Bobbs-Merrill 1995); La. Rev. Stat. Ann.

Among the states that grant utilities the prompt decisions they need to conduct business, several employ unique methods to provide that assurance. Various regulators are empowered to extend the suspension periods in their own discretion or for good reason[29], to extend the suspension period so that any party may fully prepare[30], or to extend the suspension period by applying for an extension to a designated state court.[31] Some states require that the regulator act expeditiously to ensure due process and to report to the state legislature or other officials if a decision is not rendered within a limited period.[32] Some states require that the regulator give suspended rate proceedings precedence over other matters.[33]

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§ 45:1163.1(B)(C) (West 1996); Md. Code Ann. art. 78, §§ 54F(c); 70(b)(c) (1995); Miss. Code Ann. § 77-3-39(10) (1995); Mo. Ann. Stat. §§ 387.200, 393.150 (Vernon 1996); Mont. Code Ann. § 69-3-302(2) (1995); N.M. Stat. Ann. § 62-8-7(c) (Michie 1996); N.Y. Pub. Serv. Law § 66 (12) (McKinney 1996); N.D. Cent. Code § 49-05-06 (1995); Ohio Rev. Code Ann. § 4909.27 (Anderson 1995); Okla. Stat. tit. 17, § 152(B) (Supp. 1996); Or. Rev. Stat. § 757.215 (1995); 66 Pa. Cons. Stat. Ann. §§ 1308 (b), 1309 (b) (1995); S.D. Codified Laws Ann. §§ 49-34A-14, 49-34A-17 (1995); Tenn. Code Ann. § 65-5-203(b) (1995); Va. Code Ann. §§ 56-240, 56-265.13:6 (A) (Michie 1996); Wash. Rev. Code § 80.04.130 (1995).

[29] Alaska Stat. § 42.05.421(a) (1995); Haw. Rev. Stat. § 269-16(b) (1995); 66 Pa. Cons. Stat. Ann. § 1307 (f) (5) (1995).

[30] Iowa Code § 476.6(13) (1995).

[31] Ga. Code Ann. § 46-2-25(b) (1996).

[32] Hawaii Rev. Stat. § 269-16(a)(d); Mich. Comp. Laws § 460.6a (3) (1996) (Mich. Stat. Ann. § 22.13(6a)(3) (Callaghan 1996)).

[33] Ga. Code Ann. § 46-2-25(b); Mich Comp. Laws § 460.6a (3) (1996) (Mich. Stat. Ann. § 22.13(6a)(3) (Callaghan 1996)).

A review of the statutes enacted to address the due process rights of parties appearing before utility regulators yields several important conclusions. First and foremost, there are several states with regulatory schemes that could be interpreted as the Lower Courts interpreted the Kansas Statute. For these states, a decision by the Court in this case would act as valuable guidance concerning the constitutional implications of their regulatory framework. Furthermore, the statutes adopted by the other states vividly demonstrate that a utility's interests in prompt resolution of its rate requests can be preserved in a wide variety of ways that do not offend other parties' due process rights. The Court should grant this Petition and offer the states the constitutional guidance they need.

The need to provide constitutional guidance to the states is magnified by the current reality of utility regulation. It is clear that utility regulation is increasingly being moved to the states. An example from the natural gas industry is instructive. In its Order No. 636, FERC strongly encouraged interstate natural gas pipelines to divest their gas gathering operations.[34] As the pipelines have divested those assets, they have been assumed by entities no longer subject to federal regulation. The states, including Kansas, are considering the regulation of gathering to replace the regulation formerly offered by the federal government. As regulation moves to the states it is incumbent on the Court to ensure that the

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[34] Pipeline Serv. Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Wellhead Decontrol, 57 Fed. Reg. 13,267, III FERC Stats. & Regs. Preambles ¶ 30,939, order on reh'g, 57 Fed. Reg. 36,128, III FERC Stats. & Regs. Preambles ¶ 30,950, order on reh'g, 57 Fed. Reg. 57,911, 61 FERC ¶ 61,272 (1992).

constitutional protections will be observed by the states. Anything less leaves many consumers without the most fundamental protections required by the Constitution.

This case presents an important question of federal constitutional law. The Court's decision will have important national impact. The Court should grant this Petition and determine that the Statute as applied by the Lower Courts is unconstitutional.

CONCLUSION

The Court should grant WNG's Petition and find that the Statute, as applied by the courts of Kansas, violates the United States Constitution. This is a case of first impression that considers a significant issue of federal constitutional law which is important to utility ratepayers throughout the country. The Lower Courts' rulings deprived WNG of its constitutional right to notice and an opportunity to be heard and must therefor be reversed.

Respectfully submitted,

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